

Message Text

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ACTION L-03

INFO OCT-01 AF-06 ISO-00 OPIC-03 EB-07 IGA-02 /022 W

----- 090662

R 060905Z APR 76

FM AMEMBASSY NAIROBI

TO SECSTATE WASHDC 8801

INFO AMEMBASSY ADDIS ABABA

AMEMBASSY ABIDJAN

AMEMBASSY BAMAKO

AMEMBASSY LIBREVILLE

AMEMBASSY LOME

AMEMBASSY OUAGADOUGOU

AMEMBASSY YALUNDE

LIMITED OFFICIAL USE NAIROBI 3362

E.O. 11652: N/A

TAGS: POIC, KE

SUBJECT: TAW DEPOSITS

REF STATE 69835 (NOTAL)

1. SUMMARY: ORAL APPROACH TO CENTRAL BANK EXCHANGE CONTROLLER ELICITED RECOMMENDATION THAT LEGALITY OF TAW DEPOSITS BE ESTABLISHED BY SUBMITTING PROOF THAT FUNDS AROSE FROM TAW'S KENYAN PROFITS OR LIQUIDATION EARNINGS AND THAT EMB REPORTED RECEIPT OF FUNDS ON MONTHLY STATEMENT TO CB. END SUMMARY.

2. EMBOFF DISCUSSED TAW PAYMENTS WITH CENTRAL BANK EXCHANGE CONTROLLER APRIL 2. CONTROLLER HAD REPLIED TO TAW CORRESPONDENCE REFERRED TO IN REFTEL AND SAID THAT HE WAS "HOLDING MATTER IN HIS IN-BOX" WONDERING HOW TO APPROACH EMB FOR CLARIFICATION. SINCE HE CLAIMED NO FAMILIARITY WITH TAW'S AFRICAN EXPOSURE, BUSINESS INTERESTS IN KENYA, OR OBLIGATIONS TO OPIC/CREDITORS, HIS INITIAL CONCERNS WERE WHY CB PERMISSION HAD NOT BEEN REQUESTED. CONTROLLER WAS EQUALLY PUZZLED AS TO TAW'S MOTIVES FOR CONFESSING TO TRANSACTIONS IN FEBRUARY 23 LETTER.

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3. ACCORDING TO CONTROLLER, EXCHANGE CONTROL REGULATIONS PERMIT TAW TO REMIT BOTH ITS PROFITS AND ANY CAPITAL REALIZED FROM LIQUIDATION OF ASSETS TO OVERSEAS CREDITORS. EMB, FOR CB PURPOSES, IS CONSIDERED OVERSEAS CREDITOR BY VIRTUE OF FACT THAT ITS ACCOUNT IN COMMERCIAL BANK OF AFRICA IS DESIGNATED EXTERNAL. AS LONG AS CB IS SATISFIED THAT TAW'S REMITTANCES HAVE BEEN GENERATED WITHIN COMPANY (I.E. THAT TAW IS NOT A TRANSMISSION BELT FOR OTHER REMITTERS IN KENYA), APPROPRIATE APPROVAL CAN BE ISSUED. ERROR IN TAW'S CASE, THEN, WAS IN NOT ASKING PERMISSION (OR INVOKING IGA) PRIOR TO TRANSFER.

4. ON SUBJECT APPLICATION OF IGA TO TAW CASE, CONTROLLER POINTED OUT THAT REGARDLESS OF WHETHER AGREEMENT COVERED SUCH TRANSFERS, EMB SHOULD HAVE FORMALLY NOTIFIED GOK THAT IT WAS INVOKING IGA TO ACCEPT TAW'S FUNDS. ON THE BASIS OF EMBOFF'S DESCRIPTION OF TAW'S FINANCIAL OBLIGATIONS TO OPIC AND OTHER US CREDITORS, HE PERSONALLY DID NOT SEE RELEVANCE OF IGA TO THE CASE. CONTROLLER NOTED THAT ATWELL TRANSFER INVOLVED A CLAIM OF INCONVERTIBILITY--A RISK SPECIFICALLY MENTIONED IN BILATERAL INVESTMENT GUARANTEE. UNTIL HE HAD FURTHER INFORMATION ABOUT TAW'S SITUATION, HE COULD NOT CONFIRM ANY RIGHTS USG OR TAW MAY ENJOY UNDER IGA.

5. CONTROLLER DID PROPOSE POSSIBLE SOLUTION TO CURRENT IMPASSE WHICH WILL CONFER SOME MEASURE OF LEGALITY ON PAST TRANSACTIONS AND PREPARE SATISFACTORY PROCEDURE FOR TAW'S FUTURE REMITTANCES EITHER THROUGH EMB ACCOUNT OR FNBC'S NAIROBI OFFICE.

6. IF TAW'S NAIROBI OFFICE CAN VERIFY THAT FUNDS CHANNELLED THROUGH THE EMB'S ACCOUNT CAME FROM COMPANY PROFITS OR LIQUIDATION OF KENYAN ASSETS, AND IF EMB DEMONSTRATES THAT IT REPORTED RECEIPT OF THE MONEY TO CB IN MONTHLY STATEMENTS, CB WILL CONCUR IN THE LEGALITY OF THE REMITTANCES EX POST FACTO. TAW MAY THEN USE THE SAME EVIDENCE TO REQUEST PERMISSION TO REMIT FUTURE PAYMENTS TO OPIC OR PRIVATE CREDITORS.

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7. COMMENT: EMB BELIEVES RECOMMENDATION IN PARA 6 OFFERS SIMPLEST AND MOST EXPEDITIOUS RESOLUTION, EVEN THOUGH IT REQUIRES COOPERATION OF TAW OFFICIALS. ON THE OTHER HAND, PRESSING DEPT'S OPINION THAT IGA CREATES USG RIGHTS IN ADDITION TO THOSE AVAILABLE UNDER ORDINARY KENYAN EXCHANGE CONTROL RULES (PARA 6 OF REFTTEL) WOULD, IN TAW CASE, ENTANGLE EMB AND GOK IN LENGTHY AND UNPRODUCTIVE LEGAL EXCHANGE. IN THE END, GOK UNLIKELY TO RELIEVE EMB OF

RESPONSIBILITY TO AT LEAST NOTIFY CB PRIOR TO INVOKING
IGA AND ACCEPTING LOCAL CURRENCY. ISSUE OF GOK PRIOR
"APPROVAL" OF SUCH DEPOSITS MAY ALSO BE RAISED.

8. CONTROLLER WAS OBVIOUSLY EMBARRASSED THAT CASE EVER
RAISED IN CB BUT IS NOW OFFICIALLY RESPONSIBLE FOR IMPE-
MENTING GOK REGULATIONS. NEVERTHELESS, WE BELIEVE HE
MAY COOPERATE IN PROVIDING WRITTEN BLESSING OF TAW'S DE-
POSITS WHICH CONFORMS IN SUBSTANCE, IF NOT LETTER, TO
DEPT'S REQUEST. PLS ADVISE THEN IF EMB SHOULD APPROACH
TAW KENYA DIRECTLY TO OBTAIN DOCUMENTATION RE SOURCE
OF DEPOSITED FUNDS.

9. WOOD, DURING HIS AUTUMN 1975 VISIT TO NAIROBI, APPEARED
TO BE UNDER THE IMPRESSION THAT A FULL DISCLOSURE OF THE
TAW AFFAIR WOULD INJURE EMB-GOK RELATIONS. TO THE CON-
TRARY, ANY FALLOUT FROM EMB AND TAW APPROACHES TO CB
WILL PROBABLY NOW BE TO COMPANY'S DISADVANTAGE. ALTHOUGH
EMBOFF CAREFUL TO AVOID CRITICISM OF TAW MANAGEMENT OR
FINANCIAL STABILITY, FACT THAT PRES. WOOD CORRESPONDED
DIRECTLY TO CB ON DEPOSITS HAS RAISED EYEBROWS IN FOREIGN
EXCHANGE DEPT. WHICH FAILED TO INTERPRET TAW'S MEACULPA
ADMISSION AS VOLUNTARY, HONEST GESTURE IN SPIRIT OF GOOD
CORPORATE CITIZENSHIP. AS EXPECTED, LETTER HAS ATTRACTED
CLOSER ATTENTION TO COMPANY'S KENYAN OPERATIONS.

DECONTROL 4/6/80
MARSHALL

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